

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

APR 24 2018

Matthew Thelen
CLERK

UNITED STATES OF AMERICA

5:18 - mj-54

v.

KYLE SOTO,

REDACTED AFFIDAVIT IN
SUPPORT OF CRIMINAL
COMPLAINT
FILED UNDER SEAL

Defendant.

(STATE OF SOUTH DAKOTA)
() ss
(COUNTY OF PENNINGTON)

I, Brian Freeouf, Investigator with the Pennington County Sheriff's Office (PCSO) and currently assigned to the South Dakota Internet Crimes Against Children Taskforce (ICAC), being duly sworn, states as follows:

1. I began my law enforcement career with Pennington County in July of 2005. I spent approximately 3 years on patrol in the contract community of Wall, SD. I was then assigned to the patrol division in Rapid City in 2008. I was promoted to the rank of Senior Deputy in July of 2010. I also spent time as a School Liaison Officer and Criminal Investigations Division as a Property Crimes Investigator. Even though I was assigned as a Property Crimes Investigator I also investigated other crimes including, but not limited to, homicides, rapes, assaults, and coroner duties. My other assignments within the Sheriff's Office include Deputy Coroner, Field Training Deputy, and Defensive Tactics Training

Administrator. Due to the placement on ICAC, I have also been given the title of Special Assistant Attorney General of the State of South Dakota.

2. During my law enforcement career I have become familiar with the *modus operandi* of persons involved in enticement of a minor using the internet in violation of federal law. Based on my experience and training, I am knowledgeable of the various means utilized by individuals who illegally attempt to meet with children in order to engage in criminal sex acts.

3. The information set forth below is based upon my knowledge of an investigation conducted by the South Dakota Internet Crimes Against Children Taskforce (ICAC) and the investigation of other law enforcement agents and officers including but not limited to, South Dakota Division of Criminal Investigation (DCI), Homeland Security Investigations (HSI), the Rapid City Police Department, and the Pennington County Sheriff's Office. I have not included each and every fact obtained pursuant to this investigation, but have set forth those facts that I believe are essential to establish the necessary probable cause for the criminal complaint. I have not omitted any material fact relevant to the consideration of probable cause for a criminal complaint against the above named defendant.

4. I have been informed that 18 U.S.C. § 2422(b), Enticement of a Minor Using the Internet, makes it a crime for a person to use the internet or any other means, which affects interstate commerce, attempt to knowingly persuade,

induce, entice, and coerce a person who has not attained the age of 18 years to be caused to engage in a criminal sex act.

5. Your affiant respectfully submits that there is probable cause to believe that Kyle Soto committed the crime of enticement of a minor using the internet in violation of 18 U.S.C. § 2422(b).

PROBABLE CAUSE

6. On 4/17/2018, South Dakota ICAC Commander SSA Brent Gromer contacted me and advised me the Rhode Island ICAC needed assistance locating a suspect in South Dakota. SSA Gromer sent me the case information, including that Bristol Police Department Detective John Nappi was investigating the case. The case consisted of an 11yo boy being exploited online for naked images of himself. Detective Nappi developed an IP address being used by the suspects email account. That IP address is registered to Midcontinent Communications out of Sioux Falls SD. Detective Nappi sent Midcontinent Communications a search warrant but they would not honor it due the fact he was not signed by a Federal Court or a Court from the state of South Dakota.

7. During the month of February 2018, Martha Finnegan, a Rhode Island resident, made a complaint with the Federal Bureau of Investigation (FBI) regarding an unknown individual soliciting child pornography from an 11-year-old male, for whom she is the legal guardian. The FBI referred this investigation to the Rhode Island State Police and the Rhode Island ICAC Task Force. In his affidavit, Nappi referred to the 11-year-old as "John Doe" to protect his identity.

8. On February 20, 2018, Nappi met with Martha Finnegan in regard to this complaint. Finnegan stated she is the legal guardian for 11-year-old John Doe. Finnegan stated she was going through John Doe's email, and discovered that Doe had been conversing with an unknown male (suspect). The suspect offered to pay Doe to send an explicit video of himself. Doe had sent the suspect an image exhibiting his penis in a graphic and lascivious manner. The suspect further stated he/she would share the illicit photograph of Doe with Doe's mother if Doe refused to send a video displaying his genitals. Doe's electronic devices were turned over to Nappi for forensic analysis. Finnegan provided consent for the RI ICAC to assume Doe's online identity in order to further this investigation.

9. Detective Lavalley, member of the ICAC Task Force, signed in to Doe's email utilizing the username and password provided by Finnegan. Nappi located an email conversation between Doe and the suspect, who was utilizing the email account, *shane118@gmail.com* with the user name *Shana Roberts*. It was apparent that Doe deleted his emails, therefore not all were visible. There were a number of sections of the conversation that were accessible by reading the threads attached to sent messages.

10. On November 15, 2017, the suspect extorted Doe and solicited Doe to produce and send child pornography. Below is an excerpt from the conversation, all chat conversations are verbatim, including misspellings and grammatical errors:

Doe: Give me the fucking money

Suspect: not till i get something since you left when i was gonna pay you

Suspect: last chance !

Suspect: ok well good thing i recorded you naked i will post it online so ur mom sees it.

Suspect: goodluck online...(juvenile victim's name omitted)

Later in the conversation:

Suspect: send me a full naked pic on here then and I will send it. because you left

Doe: ok

11. On February 20, 2018, Detective Lavallee began communicating with the suspect in an undercover capacity, portraying himself as the 11-year-old male. Detective Lavallee learned that at some unknown time, the victim and the suspect engaged in a video chat on the website Fruzo. During that video chat, the victim displayed his genitals on the video. The suspect took a screen shot of the video, which showed the victim with his genitals exposed. The suspect also alleged that he saved the entire video. During the conversation, the suspect solicited Detective Lavallee, a person he (the suspect) believed to be an 11-year-old male, to produce and send child pornography, stating he would pay Detective Lavallee for a video of child pornography. The suspect also attempted to extort Detective Lavallee. Below is an excerpt from the conversation:

Suspect: Last Chance. One video and ill pay

Undercover: sry im jst nervous. u kno im 11, if I get caught my mom will ground me til im 18 lol

Suspect: She won't find out when u sent it delete it from ur phone. U wont get caught

Undercover: y should I trust ull send the money

Suspect: Because im risking lots of money!! Im not gonna scam u

Suspect: Ok i went and bought a 200\$ card believe me now?? (The suspect included a photograph of an Amazon gift card)

Undercover: lol ur not risking ne thing lol. i send u a video then u don't send it and im screwed and u have my video and still have the money

Suspect: I just sent a picture of the card i bought. If you want the code send me a video

Undercover: right but it's the same thing, how do I know ull give me the code?

Suspect: I gave you proof....clearly you don't want it..

Undercover: I do im just scared

Suspect: No need to be...i wont show anyone and im rich I will pay you

Suspect: Here is half the code.... X7HS-9KD2. You will get the other half after the video

Undercover: im too scared

Suspect: You don't have to show your face.. nobody will know its you ok?

Undercover: so what do you want me to show then?

Suspect: Just you naked from your stomach down...and jacking off your dick

Undercover: idk

Suspect: Well guess what I recorded you that time we were on fruzo so if you don't want me to post this online and show ur mom...i need a video now

Suspect: Im not joking

Suspect: Then make a video now or im gonna show her.

Suspect: I know ur name so I can find her really easily. If we make a deal i wont show her tho

12. During the chat conversation, the suspect also sent Detective Lavallee child pornography in the form of an image of what the suspect alleged to be a screen shot of the aforementioned video chat on Fruzo. The image depicted a male, believed to be the victim, 11-year-old John Doe, displaying his genitals to the camera in a lude and lascivious manner.

13. On February 22, 2018, legal process was sent to Google Legal Investigations Support. On April 6, 2018, Google responded to the legal process. Nappi viewed the Internet Protocol (IP) connection logs associated with the Google email address *shane118@gmail.com*. The IP connection logs showed logins and logouts occurred from February 19, 2018 at 01:14:53 UTC to February 21, 2018, 23:59:47. Nappi conducted an inquiry with the American Registry of Internet Numbers (ARIN) and determined that owner of IP address 208.107.164.178 was

MidContinent Communications, 3901 N. Louise Avenue, Sioux Falls, South Dakota 57107.

14. Thereafter, I confirmed the IP address and it is assigned to Midcontinent Communications. I was also able to locate that IP address was being utilized in the Rapid City area market. This would indicate the user of the IP address likely lives in the Rapid City area.

15. On April 17, 2018, I applied for a search warrant reference user information of the IP address 208.107.164.178. The Honorable Judge Matt Brown granted the search warrant and I proceeded to serve that search warrant on Midcontinent Communications. Midcontinent Responded later that day with the following information:

Erica Soto

[REDACTED]
Rapid City, SD 57702

Home Phone: 605-545-2644

16. I checked if Erica was listed in our local law enforcement system and I did not find any information for her. I checked social media was able to find a Facebook account for Erica Soto who lives in Rapid City. Further examination showed she is married to Kyle Soto.

17. On April 17, 2018, at about 1500 hours, I drove past [REDACTED] [REDACTED] in Rapid City. The house is faces south and is a single level home. The numbers [REDACTED] are visibly displayed on the front porch pillar of the home. The house has brown siding halfway up the house and is beige in color the rest of the way up. There was a black GMC Terrain sitting out front of the house. The

vehicle was backed into the driveway and there was not a license plate on the front of the vehicle.

18. I communicated with Detective Nappi via email and I told him the information I had obtained. He told me based on the last name he had previously developed a suspect named Kyle Soto. I told him he appeared to be the husband to the Erica Soto. Detective Nappi agreed with me and sent me an image they had receive during their investigation of the suspect. The image provided to me of the man appeared to be the same person I saw on Erica Soto's Facebook and Kyle Soto's Facebook.

19. On 4/19/18, I checked if Kyle Soto was listed in our local law enforcement system. Kyle was in our local system. In 2016, Kyle was the victim of a vehicle burglary. At the time, Kyle was living at [REDACTED]. The vehicle that was burglarized was a 2011 Black GMC Terrain, like the one I saw in the driveway, with Florida License Plate CNME22. In 2017, Kyle was also served civil paperwork at [REDACTED]. Based on the Internet history, the car, and the photos of both Erica and Kyle being married. I believe Kyle Soto lives at [REDACTED], and was the individual commanding John Doe to engage in production of child pornography.

20. While preparing for the search warrant, I stayed in contact with Detective Nappi and he advised me of the following. Detective Nappi had served a search warrant, for the email account, which was being utilized by Kyle Soto, during the chats with the 11yo victim, and the undercover officers. The email

account is shanel118@gmail.com. Detective Nappi advised he had also received the contents of the email from Gmail. They were able to find the video and chat of their 11yo victim. Further follow up is needed, but they found numerous other unidentified minor victims who were also enticed for naked images in the same manner as their 11yo victim.

21. Detective Nappi advised he believed this email was being utilized by Kyle Soto based on the IP address which came back to his residence is the same IP address used to log into the Gmail account. A photo which was captured from the chats of the suspect matched a photo of Kyle on Facebook.

REQUEST FOR SEALING OF MATTER

22. I request that the Court order sealing this case for 180 days. The documents filed in the case discuss an ongoing criminal investigation that is neither public nor known to all the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may give targets an opportunity to flee, destroy or tamper with evidence, change patterns of behavior, notify confederates, or otherwise seriously jeopardize the investigation.

WARRANT REQUEST


23. Based on the above-mentioned information, I respectfully request this Court to issue an arrest warrant for Kyle Soto.

CONCLUSION

24. Your affiant submits that there is probable cause to believe that Kyle Soto committed a violation of 18 U.S.C. § 2422(b).

Wherefore, I request the issuance of a criminal complaint and arrest warrant against Kyle Soto.

Dated: 4/24/18


Inv. Brian Freeouf
Pennington County Sheriff's Office
and Internet Crimes Against
Children Taskforce

Sworn to before me and:

☒ signed in my presence.

☐ submitted, attested to, and acknowledged by reliable electronic means.


DANETA WOLLMANN
U.S. MAGISTRATE JUDGE